



California Fair Political Practices Commission

June 4, 1986

David H. Hirsch
Lompoc City Attorney
100 Civic Center Plaza
City Hall
Lompoc, CA 93438

Re: Your Request for Advice
Our File No. A-86-147

Dear Mr. Hirsch:

This is in response to your request for advice on behalf of Lompoc City Councilmember Karl Braun. The facts as stated in your letter and in my telephone conversations with you and City Administrator Gene Wahlers are as follows.

FACTS

The City of Lompoc has a Redevelopment Agency which has a project that has been proceeding in the downtown area. The project consists of the construction of new parking facilities. In order to facilitate this project, the city has received a grant from the Economic Development Administration of the U. S. Department of Commerce for \$1.1 million and has entered into a Cooperative Agreement with the Redevelopment Agency for the use of these grant funds for the acquisition of land, design, and construction of these parking facilities. The grant is structured to require that matching funds be provided by the City. The City is currently in the process of making its annual allocation of Community Development Block Grant (CDBG) funds. As part of that process, the City is considering whether to allocate \$77,441 from the City's 12th Year CDBG funds and \$90,909 of the City's 11th Year CDBG funds to be used as matching funds for the downtown parking project.

Councilmember Braun owns the following interests in the downtown area:

- (1) A pharmacy located on the corner of Ocean Avenue and H Street, approximately one block from the proposed parking facility.

(2) Two commercial rental units located at 113-115 West Ocean Avenue, across the street and approximately one-half block from the proposed parking facility. These two units currently house retail businesses.

QUESTIONS

1. May Councilmember Braun participate in decisions relating to the allocation of matching funds for the downtown parking facility?

2. May Councilmember Braun participate in decisions relating to other projects in the redevelopment area that may occur in the future (for example, a hotel or shopping complex near the proposed new parking lot)?

ANALYSIS

The Political Reform Act (the "Act")^{1/} provides that a public official may not make, participate in making, or in any way use his or her official position to influence the making of any governmental decision in which he or she has a financial interest. Section 87100. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

* * *

Section 87103(a)-(c).

From the facts you have provided, Councilmember Braun has interests in three parcels of real property which are presumably each worth \$1,000 or more, an interest in a business entity (the pharmacy) which is presumably worth \$1,000 or more, and three sources of income (the pharmacy and the two tenants of the commercial properties) which presumably each provide him with income of \$250 or more in any 12-month period. Accordingly, Councilmember Braun may not make, participate in, or use his official position to influence any governmental decision that could have a reasonably foreseeable material financial effect on the properties or the pharmacy owned by him, or on the tenants of the two commercial properties owned by him.

With regard to the real property interests owned by Councilmember Braun, the Commission has adopted the following monetary guidelines for determining the materiality of an effect on an interest in real property:

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month; or

2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or

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2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

2 Cal. Adm. Code Section
18702(b)(2).

The two rental properties owned by Councilmember Braun are located within one-half block (approximately 200-300 feet) of the proposed parking facilities. The pharmacy is located within one block (approximately 400-500 feet) of the proposed parking facilities. You have indicated that one of the principal purposes of the project is to revitalize business in the downtown area. Because Councilmember Braun's properties are zoned for commercial use, their value is likely to increase as a result of the nearby parking project. Accordingly, we conclude that the proposed parking project would have a material financial effect on Councilmember Braun's real property interests. See Opinion requested by William L. Owen, 2 FPFC Opinions 77 (No. 76-005, June 2, 1975).

Next we must consider whether Councilmember Braun's real properties would be affected by the proposed parking project in a manner that is distinguishable from the effect on the public generally. Commission regulation 2 Cal. Adm. Code Section 18703 provides that a material financial effect of a governmental decision on an official's interest is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. Generally, commercial property owners are not a significant segment of the public. (See Owen Opinion, *supra*.) The effect of the proposed parking project on the properties owned by Councilmember Braun appears to be distinguishable from its effect on other properties in Lompoc because of the proximity of Councilmember Braun's properties to the proposed project. Therefore Councilmember Braun must disqualify himself from participating in decisions concerning the proposed parking project.

Councilmember Braun also has a financial interest in three business entities, the pharmacy in which he has an investment interest and which is a source of income to him, and the two business entities which occupy the commercial rental properties and which are sources of income to him. Commission regulation 2 Cal. Adm. Code Section 18702.2 enumerates monetary guidelines for determining whether an effect on a business entity will be

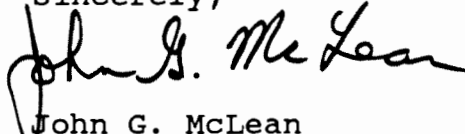
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considered material. For small business entities such as it appears are involved here, an effect is considered material if it will increase or decrease gross revenues for a fiscal year of \$10,000 or more. You have indicated that there currently exists adequate parking within a reasonable distance (300 feet) of the pharmacy, for use by customers of the pharmacy. Accordingly, you do not believe that providing additional parking through construction of the proposed parking project will result in an increase or decrease in revenues for the pharmacy specifically as a result of the additional parking spaces. You have not provided specific information regarding the other business entities and it is difficult to assess the effect upon these entities. However, since we have concluded that Councilmember Braun's real property interests require his disqualification, it is not necessary to reach a conclusion as to the potential conflict of interest regarding any of these business entities.

With regard to decisions relating to other projects in the redevelopment area, we must again consider whether these decisions will have a reasonably foreseeable material financial effect on Councilmember Braun's financial interests which is distinguishable from the effect on the public generally. This is a conclusion which may be reached only after analyzing the particular facts and circumstances surrounding each particular decision. If you would like to discuss a particular situation, please let me know.

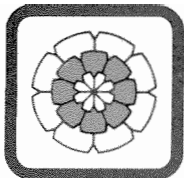
If you should have any questions regarding this letter, please contact me at (916) 322-5901.

Sincerely,

A handwritten signature in dark ink, appearing to read "John G. McLean". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John G. McLean
Counsel
Legal Division

JGM:plh
Enclosures



VALLEY OF FLOWERS

CITY OF LOMPOC

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MAY 7 2 38 PM '86

May 2, 1986

John McLean
Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, Ca 95814

Re: Conflict of Interest Issues Relating to Lompoc City Councilman Karl Braun


Dear Mr. McLean:

In accordance with the conversation today with Mr. Wahlers and myself regarding the above-referenced matter, this letter is to confirm our request for written advice regarding whether Councilman Braun may participate in matters relating to the downtown parking project described in my letter of April 30, 1986. Councilman Braun has given his consent authorizing me to request an Advice Letter.

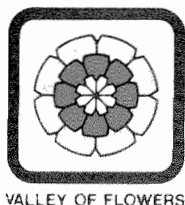
As we discussed, there is adequate existing parking (both on and off street) within a reasonable distance (300 feet) of Councilman Braun's pharmacy, for use by his customers. Thus, it does not appear that simply providing additional parking through the construction of the proposed parking lot will result in an increase in business. At any rate, we would appreciate it if, in addition to advising as to whether Councilman Braun may participate in matters relating to the allocation of matching funds for the grant for the downtown parking facility, the scope of the advice could also give guidance as to Councilman Braun's participation in other potential projects in the redevelopment area that may occur in the future (for example, a hotel or shopping complex near the proposed new parking lot).

We greatly appreciate your having taken efforts to provide us with a prompt preliminary indication on the propriety of Councilman Braun's participation. As we discussed, since it is likely that if Councilman Braun does not participate the City will be losing a 1.1 million dollar grant, this matter is of such a sensitive nature that a formal Advice Letter will be very helpful. Thank you for your consideration.

Very truly yours,


David H. Hirsch
City Attorney

c: Gene Wahlers, City Administrator
Councilman Karl Braun



CITY OF LOMPOC

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April 30, 1986

Mr. John McLean
Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

RE: Conflict of Interest Issues Relating to Lompoc City Councilman Karl Braun

Dear Mr. McLean:

In accordance with our conversation, this letter is being provided to give you the factual background of the conflict of interest situation that I described to you relating to Lompoc City Councilman Karl Braun. As I indicated, the City has a Redevelopment Agency which has a project that has been proceeding in our downtown area, consisting of the construction of new parking facilities. Councilman Braun has several interests in the downtown that constitute potential conflicts of interest. The City is currently in the process of making its annual allocation of Community Development Block Grant funds, which includes two items related to funding for the Redevelopment area parking project. Thus, the question that we are seeking clarification on from your office is whether Councilman Braun is prohibited from participating in a decision relating to the allocation of the Block Grant funds to the downtown project. The following details are provided in order to assist your analysis. In addition, the attached diagram has been prepared by our Planning Department staff in order to give some additional perspective on the issues. The green colored areas are properties owned by Councilman Braun and the yellow is the proposed parking project.

OVERVIEW OF THE DOWNTOWN PARKING PROJECT

As illustrated by the attached diagram, the Redevelopment Agency's project is the construction of parking facilities in the downtown area of the City of Lompoc. In order to facilitate this project, the City has received a grant from the Economic Development Administration of the U.S. Department of Commerce for \$1.1 million, and has entered into a Cooperative Agreement with the Redevelopment Agency for the use of these grant funds for the design, acquisition of land, and construction of these parking facilities. The grant is structured to require that matching funds be provided by the City.

Councilman Braun has generally abstained from participating in any decisions relating to matters involving the downtown in order to avoid any appearance of impropriety due to his business interests. Because of this approach, we have not had to reach the question of whether his interests constitute a conflict requiring disqualification (i.e. whether it's reasonably foreseeable that decisions on the parking project will have a material financial effect on his interest). Up to now his vote has not been necessary for the parking project to continue to proceed, since previously only one Councilman had been opposed to the project, and thus matters relating to the parking project have typically been receiving votes of approval of three "yes" votes, one "no" vote, and one "abstention."

One of the Councilmembers who had been previously in favor of the project, and who had consistently voted "yes" on matters related to it, has now publically announced that he is "withdrawing his support" and from now on will not vote in favor of any matter relating to the project. Because of this turn of events, Councilman Bruan's participation is necessary if the project is to proceed, and therefore, technical advice regarding required disqualification under the Political Reform Act, and its regulations, is needed. It might also be noted that the City has already retained design consultants, acquisition and relocation specialists, purchased one piece of property, and negotiated the purchase of other parcels of property for the parking facility.

COUNCILMAN BRAUN'S FINANCIAL INTERESTS IN THE DOWNTOWN AREA

Against the foregoing background, the following is submitted relative to Councilman Braun's potential financial interests in the downtown. First of all, Councilman Braun owns a pharmacy that is located on the corner of Ocean Avenue and H Street, which will be approximately one block from the proposed parking facility. It might be noted that this business, as is true of many others in the downtown, has no on-site parking of its own for use of its customers. Rather, customers have to use on street parking in front of the business, or use other existing parking facilities that are available. In this regard, it might be noted that another parking facility that is already existing and open to the public, is located approximately one block away from the pharmacy. In addition to the pharmacy, Councilman Braun owns two commercial rental units that are located on Ocean Avenue across the street from his pharmacy (113 - 115 West Ocean Avenue). These are also indicated on the attached map. Finally, Councilman Braun had a financial interest in an entity that owns property in the downtown area that had been seeking to develop a hotel in the vicinity. It is my understanding that this entity (a limited partnership) was dissolved by the general partner, who bought out the other participants. Councilman Braun's Statement of Economic Interest forms indicate his interest in this entity was disposed of in September, 1984. Councilman Braun has also indicated that this financial arrangement resulted in a loss that has been "written off", and the

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relationship is otherwise concluded. Property owned by this general partner is among that being acquired by the Redevelopment Agency for the construction of the parking facility.

PROPOSED ACTION RELATING TO COMMUNITY DEVELOPMENT BLOCK GRANT FUND

The question that is now presented relates to whether Councilman Braun may participate in the decision of whether certain funds from Community Development Block Grants can be allocated to the downtown parking project. More specifically, this includes allocation of \$77,441 from the City's 12th Year Community Development Block Grant funds, and a reallocation of \$90,909 of funds remaining from the 11th Year Block Grant program. These funds will be part of the match to the 1.1 million dollar grant. Additionally, future decisions relating to the rest of the matching funds will be necessary (most likely, from allocations from the City's General Fund).

I hope the foregoing will be of assistance in your analysis as to whether Councilman Braun has a financial interest that is such that he must disqualify himself from participating in any decision relating to the downtown parking project. It would appear that given the nature of Councilman Braun's financial interests (a retail business and two commercial rental units) that it is difficult to definitively analyze the effect of the proposed parking project on his financial interests. Thus, for example, it would appear speculative to say that as a result of a decision allocating funds for the downtown parking project, that there will be an increase or decrease in gross revenues of an identifiable dollar amount on his retail business (see 2 California Administrative Code Section 18702). By the same token, the materiality of the financial effect on the income producing potential of the real property (113-115 West Ocean) is difficult to substantively identify. Therefore, given the nature of the financial interests and the type of decision involved, your advice regarding whether Councilman Braun can or cannot participate will be greatly appreciated.

If I can provide you with any additional clarification regarding the foregoing please feel free to give me a call at (805) 736-1261, ext. 204. Thank you for your courtesy and anticipated expeditious handling of this matter.

Very truly yours,


David H. Hirsch
City Attorney

c: Gene Wahlers, City Administrator
Councilman Karl Braun



California Fair Political Practices Commission

May 8, 1986

David H. Hirsch
Lompoc City Attorney
City Hall
100 Civic Center Plaza
Lompoc, CA 93438

Re: 86-147

Dear Mr. Hirsch:

Your letter requesting advice under the Political Reform Act has been received on May 7, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

John G. Mclean
Counsel
Legal Division

JGM:plh
cc: Karl Braun